

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JAVIER HERNANDEZ,

Plaintiff,

v.

**CYPRESS PROPERTY & CASUALTY
INSURANCE COMPANY,**

Defendant.

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**CIVIL ACTION NO. _____
JURY**

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant CYPRESS PROPERTY & CASUALTY INSURANCE COMPANY (“Defendant”) files its Notice of Removal to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity of citizenship and amount in controversy, and respectfully shows the following:

I. PROCEDURAL BACKGROUND

1. On July 24, 2024, Plaintiff, Javier Hernandez (“Plaintiff”) filed his Original Petition in a case styled *Javier Hernandez v. Cypress Property & Casualty Insurance Company*; Cause No. 2024-46422, pending in the 234th District Court in Harris County, Texas.
2. Defendant received a copy of the Plaintiff’s Original Petition on or about July 26, 2024.
3. Defendant files this notice of removal within 30 days of receiving Plaintiff’s Original Petition. *See* 28 U.S.C. § 1446(b). This Notice of Removal is being filed within one year of the commencement of this action. *see id.*
4. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as required by 28 U.S.C. § 1446(a).

5. Attached hereto are copies of the following documents:

- Exhibit 1:** The state court's Docket Sheet;
- Exhibit 2:** Plaintiff's Original Petition;
- Exhibit 3:** Citation for Defendant Cypress Property & Casualty Insurance Company;
- Exhibit 4:** Executed Return;
- Exhibit 5:** Defendant Cypress Property & Casualty Insurance Company Original Answer Filed in State Court; and;
- Exhibit 6:** List of Parties and Counsel;
- Exhibit 7:** Declarations Page of Plaintiff's Policy with Defendant.

II. BASES FOR REMOVAL

6. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a)(1), 1441(a), and 1446.

A. PLAINTIFF AND DEFENDANT ARE DIVERSE.

7. Plaintiff, Javier Hernandez is an individual residing in Harris County, Texas.

8. Defendant, Cypress Property & Casualty Insurance Company is incorporated under the laws of the State of Florida, with its principal place of business in Jacksonville, Florida.

9. Thus, this lawsuit is between citizens of different states, and there is complete diversity of citizenship between Plaintiff and Cypress.

B. THE AMOUNT IN CONTROVERSY EXCEEDS THE JURISDICTIONAL REQUIREMENTS FOR SUBJECT MATTER JURISDICTION.

10. Plaintiff asserts the seeks only monetary relief of \$250,000 or less, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs." See Petition, Exhibit 2, ¶ 68. This allegation sufficiently demonstrates that the amount in controversy exceeds \$75,000.

11. In addition, Plaintiff is suing for benefits afforded to them under their homeowner's insurance policy issued by Defendant, which includes \$151,000.00 in coverage for Plaintiff's dwelling. *See* Policy Declarations, attached and incorporated herein as Exhibit 7. In a first-party insurance action, the amount of contract damages can be up to the insured amount. Moreover, the Petition alleges Defendant's actions were committed knowingly and intentionally and Plaintiff is seeking treble damages and exemplary damages. *See* Petition, Exhibit 2 ¶¶ 63-68.

12. The amount in controversy includes the following alleged elements of damages and attorney's fees: (i) actual damages for losses under the insurance policy; (ii) actual damages and treble damages for violation of the DTPA; and (iii) interest and attorney's fees. *See Sotello v. Allstate Fire & Cas. Ins. Co.*, No. 5:20-CV-1303-DAE, 2021 WL 1624272, at *2 (W.D. Tex. Feb. 22, 2021) (citing *St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *Arceo v. Allstate Tex. Lloyd's*, No. 5:19-CV-00177-OLG, 2019 WL 10302262, at *1-2 (W.D. Tex. June 10, 2019); *Ray v. State Farm Lloyds*, No. Civ. A. 3:98-CV-1288-G, 1999 WL 151667, at *2 (N.D. Tex. Mar. 10, 1999)) (stating items the court may consider in determining amount in controversy include attorneys' fees, statutory damages, punitive damages, treble damages, policy limits and penalties, but not interest or costs).

13. Considering all the foregoing, it is reasonably clear that the amount in controversy exceeds the sum of \$75,000.00 and the Court has diversity jurisdiction over this matter. *See* 28 U.S.C. § 1332(a).

C. THIS REMOVAL IS PROCEDURALLY CORRECT

14. Defendant received service of this lawsuit July 26, 2024. Thus, Defendant is filing this Notice within the 30-day time period required by 28 U.S.C. § 1446(b).

15. Venue is proper in this District and Division under 28 U.S.C. §1446(a) because i) this District and Division include the county in which the state action has been pending, and ii) a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

16. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

17. Promptly after Defendant files this Notice of Removal, written notice of the filing will be given to Plaintiff pursuant to 28 U.S.C. §1446(d).

18. Promptly after Defendant files this Notice of Removal, a true and correct copy of same will be filed with the Clerk of the Harris County District Court pursuant to 28 U.S.C. §1446(d).

III. CONCLUSION

19. Based upon the foregoing, the exhibits submitted in support of this removal, and other documents filed contemporaneously with this Notice of Removal, Defendant Cypress Property & Casualty Insurance Company hereby removes this case to this Court for trial and determination.

Respectfully submitted,

/s/ Rhonda J. Thompson

Rhonda J. Thompson, *Attorney-in-Charge*

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2024, a true and correct copy of the foregoing document was electronically served on Plaintiff's counsel below in accordance with the Texas Rules of Civil Procedure:

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/s/ Rhonda J. Thompson
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